

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LORI F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-5313-BAT

**ORDER REVERSING THE
COMMISSIONER'S DECISION**

Plaintiff seeks review of the denial of her application for Disability Insurance Benefits. She contends the ALJ erroneously failed to fully account for a medical opinion found persuasive, and misevaluated Plaintiff's testimony and lay witness statements. Dkt. 12 at 2.¹ As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is currently 63 years old, has a GED and some college education, and has worked as a fast-food clerk and courier/delivery driver. Tr. 47, 184. In January 2020, she applied for benefits, alleging disability as of November 20, 2014. Tr. 168-69. Her application

¹ Plaintiff's opening brief fails to list the assignments of error on the first page, as required by the Court's scheduling order. Dkt. 9 at 2. In the future, counsel shall take care to comply with the requirements set forth in this Court's orders.

1 was denied initially and on reconsideration. Tr. 89-91, 99-105. The ALJ conducted a hearing in
2 March 2021 (Tr. 41-66), and subsequently found Plaintiff not disabled. Tr. 21-33. As the
3 Appeals Council denied Plaintiff's request for review, the ALJ's decision is the Commissioner's
4 final decision. Tr. 7-12.

5 **DISCUSSION**

6 **A. Medical Opinion Evidence**

7 The ALJ found the 2007 opinion of State agency consultant Robert Hoskins, M.D., to be
8 persuasive, but failed to fully account for the opinion in determining RFC. *See* Tr. 31.
9 Specifically, the ALJ failed to include the push/pull, reaching, and environmental limitations Dr.
10 Hoskins identified. *Compare* Tr. 27 *with* Tr. 344, 346-47. The ALJ erred in purporting to credit
11 Dr. Hoskins's opinion but failing to incorporate all of the limitations he identified, as the
12 Commissioner fails to dispute. *See* Dkt. 13 at 7.

13 The Commissioner contends "any potential error" in the ALJ's assessment of Dr.
14 Hoskins's opinion is harmless because Dr. Hoskins's opinion is of limited probative value due to
15 the fact that it was written more than seven years before the adjudicated period started. Dkt. 13
16 at 7. However, the ALJ nonetheless found the opinion to be persuasive because it was supported
17 by a thorough review of the evidence available to Dr. Hoskins and was consistent with evidence
18 in the record. *See* Tr. 31. The ALJ also found Dr. Hoskins's opinion was persuasive because he
19 is an expert in Social Security disability adjudication. Tr. 31. Although the ALJ could have
20 concluded that Dr. Hoskins's opinion was unpersuasive based on its timing, the ALJ did not put
21 forth this reasoning and the Court declines to reweigh the evidence to enter such findings in the
22 first instance.

23 Although Plaintiff argues this case should be remanded for a finding of disability because

1 such a finding would be required if Dr. Hoskins's opinion is credited as true (Dkt. 12 at 17-18),
2 Plaintiff has not shown the record is free of conflicts such that further proceedings would serve
3 no useful purpose. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (setting forth
4 three requirements that must be satisfied before remanding for a finding of disability).
5 Accordingly, the Court finds Plaintiff's requested remedy is not appropriate.

6 **B. Plaintiff's and Lay Testimony**

7 The ALJ discounted Plaintiff's testimony finding Plaintiff's activities were inconsistent
8 with her allegations, and the objective evidence did not corroborate Plaintiff's allegations.
9 Plaintiff contends these reasons are not clear and convincing, as required in the Ninth Circuit.
10 *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

11 The ALJ contrasted Plaintiff's testimony describing disabling physical limitations with
12 her function report indicating she could care for her pets, clean, go on walks, prepare meals, go
13 outside almost every day, shop online, drive to the beach, lives alone, and does not require
14 reminders to complete her tasks. Tr. 29. Plaintiff argues the ALJ mischaracterized her activities
15 by ignoring the explanation and details provided in her function report as well as the lay
16 statements, which indicate Plaintiff's ability to complete her activities had diminished over time
17 and was more limited than described by the ALJ. Dkt. 12 at 13-14. Indeed, Plaintiff's function
18 report describes her activities as more limited than the ALJ found them to be. For example,
19 Plaintiff reported she used to take her dogs to the beach every day, but now she tries to drive
20 them there once a week and often cannot go due to panic attacks. *See* Tr. 205-06. Plaintiff
21 reported she can prepare instant soup and eat ice cream but can no longer prepare meals that
22 require standing for longer periods. *See* Tr. 207. She stated on good days, she can sweep, wash
23 dishes, and wipe down the counters, but cannot complete these tasks on a bad day. *Id.* The ALJ

1 RFC as needed; and proceed to the remaining steps of the disability determination process as
2 appropriate.

3 DATED this 13th day of December, 2022.

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6 BRIAN A. TSUCHIDA
7 United States Magistrate Judge
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